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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

PLAINTIFFS' OPPOSITION TO MOTION TO SHORTEN TIME AND TO EXPEDITE BY STATES OF LOUISIANA AND MISSISSIPPI

Date: TBD
Time: TBD
Place: Courtroom 8
Judge: Hon. Lucy H. Koh

Plaintiffs provide this Opposition to the Motion to Shorten Time and to Expedite by States of Louisiana and Mississippi (the "Motion"). This Opposition is supported by the Declaration of Sadik Huseny ("Huseny Decl.").

Louisiana's and Mississippi's Motion should be denied. The eleventh hour request comes with no appropriate basis for the emergency action requested. To the extent there is any emergency, it was created by Louisiana's and Mississippi's failures to act swiftly. The burdens of those failures should not be borne by Plaintiffs and this Court.

I. THE STATES UNNECESSARILY DELAYED

Louisiana's and Mississippi's delay in bringing the Motion and their Motion to Intervene belies the exigency they now insist on. This case has been pending since August 18, 2020 and has been well-publicized. It would be surprising that no Louisiana official was aware of this case prior to September 17, 2020. For example, officials in the Governor's Office—the state officials in charge of Census operations in Louisiana—likely would have heard about this case early on. And nothing in the Motion and accompanying papers indicates otherwise. Instead, the St. John Declaration merely states that, as far as Mr. St. John is aware, the Louisiana Attorney General's Office only learned of the case on September 17. It makes no statement as to why any other Louisiana officials could not have raised any concerns with the parties earlier, or moved to intervene sooner. Moreover, the Motion does not even attempt to state that officials in Mississippi were unaware of this case before September 17.

Even counting from September 17, the only explanation for the delay is the amount of time needed to respond to Plaintiffs' First Amended Complaint. *See* Dkt. 206-1, St. John. Decl. ¶ 2. Yet Louisiana and Mississippi hardly provided substantive responses for many of the allegations. *See, e.g.*, Dkt. 204-19 at ¶¶ 20-50, 153-166, 268-273, 291-297, 304-339. No other explanation is provided to justify the delay.

The above demonstrates that any exigency is of Louisiana's and Mississippi's own making. This is insufficient to now burden Plaintiffs and this Court with an expedited briefing schedule. *Cf. Silicon Graphics, Inc. v. ATI Techs., Inc.*, No. C 07-80283, 2007 WL 4591380, at

*1 (N.D. Cal. Dec. 28, 2007) (denying motion to shorten time, noting that "a party may not create an 'emergency' by failing to seek relief until a deadline is imminent").

II. THE STATES FAILED TO ADEQUATELY MEET AND CONFER

The first Plaintiffs heard of any expedited schedule, let alone a 24-hour turnaround, was less than twenty minutes after the Preliminary Injunction Hearing concluded. *See* Huseny Decl. ¶ 3. No explanation has been given as to why Mr. St. John could not have reached out to the parties on September 17 to discuss a potential briefing schedule. Instead, Mr. St. John, from the Louisiana Attorney General's Office, and purportedly speaking on behalf of "potentially" "other [never-before-identified] States," demanded a position on a Motion to Intervene and a Motion to Shorten Time within 14 hours. Dkt. 206-2. Plaintiffs were not provided drafts of any motions to enable them to consider whether the 24-hour turnaround was even feasible, let alone warranted. *See* Huseny Decl. ¶¶ 3-4.

Plaintiffs' counsel conferred with all Plaintiffs and responded first thing in the morning. *See id.* ¶ 4. When Plaintiffs asked for additional information, Mr. St. John chastised Plaintiffs' counsel for even asking and unilaterally set a 1-hour deadline to provide a position. *See id.* ¶¶ 4-5; Dkt. 206-2. Plaintiffs could not reasonably provide a position without additional information and could not respond to such an unreasonable deadline and demand. *See* Huseny Decl. ¶¶ 4-5.

Having now seen the Motion to Intervene, it is clear that Plaintiffs were right not to be strong-armed into agreeing to Louisiana's and Mississippi's demands.[1] Louisiana and Mississippi suggest that stopping enumeration in two days gives them the best chance at getting a more accurate count, rather than allowing the Bureau to continue enumeration activities for another thirty-three days. Moreover, no governmental official from either State provided any declaration substantiating any allegedly harmed interest due to Census-related activities. Indeed, Mississippi provide no declaration at all. Because of this lack of substantiated interests, the parties and the Court should have a reasonable amount of time to understand the interests being

[1] Indeed, it is surprising that Louisiana and Mississippi were able to convince the Department of Justice to agree in advance to a filing that states that "the conduct of the federal Defendants compellingly reinforce[s] that they are inadequate to represent the interests of the State Intervenors." Dkt. 204 at 11. Now that Defendants have seen the actual motion to intervene, Plaintiffs are not certain whether Defendants' consent to intervention maintains.

claimed, and by whom, in order to appropriately respond to and then ultimately rule on the Motion to Intervene.

III. THE STATES' MOTION CAN BE HEARD ON A REGULAR SCHEDULE

While Louisiana's and Mississippi's 24-hour demand is now moot, at this stage, nothing requires the expedited schedule demanded by these States. *First*, Louisiana and Mississippi need not be parties here to have their interests considered on appeal. Indeed, they have already filed an amicus brief in the appeal. And as noted in the Motion itself, they may also intervene at the appellate level. *See* Dkt. 206 at ¶ 14. The "demanding" standard to do so is no reason to grant the relief sought in the Motion—especially when they could have acted sooner in this case. *Id.*

Second, as detailed above, any exigency asserted by Louisiana and Mississippi is of their own making. Louisiana declares only that no one in its Attorney General's Office knew of this case before September 17 to excuse its delay. And Mississippi makes no statement whatsoever regarding its delay. There were ample opportunities for these States' claimed interests to be represented, but neither State availed itself of those opportunities.

For example, as the Court is well-aware, neither Louisiana nor Mississippi filed an amicus brief with the Court during briefing on the preliminary injunction—even though other States did. And Plaintiffs even agreed not to include the harms and interests of Plaintiffs added in the First Amended Complaint as part of the record for the preliminary injunction motion, to avoid any prejudice and to not disrupt the schedule. That motion's record is now closed, the Court has ruled, and Defendants have appealed. Thus, there absolutely is no need for any expedited schedule.

The default briefing schedule, or another reasonable schedule as set by the Court, would be appropriate, and would provide Plaintiffs enough time—given the emergency Ninth Circuit filings being made by Defendants in this case—to consider the claimed interests of Louisiana and Mississippi in this case and Plaintiffs' ultimate position on the motion to intervene.

Dated: September 28, 2020

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ATTESTATION

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: September 28, 2020

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